IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRL.O.P. No.2347 of 2003 and CRL.O.P. No. 4617 of 2003
and
Crl.M.P.Nos.840, 841 & 1603 of 2003

Gold Quest International Pvt. Ltd.,
rep. by its Director A.Pushpam,
The Rain Tree Place, B-Wing,
9th Floor, #7, MCNichols Road,
Chetpet, Chennai-31. ... Petitioner in
CrlOP.2347/2003

Conybio Healthcare (INDIA) Private
Limited., rep. by its Regional Director,
Nresh K.Thapa,
137 A Jawaharlal Nehru Salai,
Eekattuthangal,
Chennai-97 ...Petitioner in
Crl.O.P.4617/2003

-Vs-

1.The State of Tamil Nadu,
rep. by its Secretary to
Government, Home Department,
Fort St. George,
Chennai-9.

2.Director General of Police,
Crime Branch, Egmore,
Chennai. .. Respondents 1&2
in both CrlOPs.

The Director General of Police,
Economic Offences Wing,
Chennai. ..3rd Respondent in
CrlOP.2347/2003

The Inspector General of Police,
Economic Offences Wing,
Chennai. ..3rd Respondent in
CrlOP.4617/2003

Criminal Original petitions are filed under Section 482 Cr.P.C
as stated therein.

For petitioners: Mrs.Nalini Chidambaram
senior counsel for
Mr.S.silambanan

For respondents : Mr.Abudukumar Rajarathinam
Govt.Advocate(Crl.Side)

:COMMON ORDER

The petitioner in Crl.O.P.No.2347 of 2003 has filed the Criminal Original Petition to direct respondents 2 and 3 to withdraw all instructions issued by them to various law enforcement agencies and to the Police of various districts in the State of Tamil Nadu, whereby the respondents have asked these agencies to initiate action against the petitioner under the Prize Chits and Money Circulation Schemes (Banning) Act (hereinafter referred to as the Act) and/or under Section 420 IPC.

2. The petitioner in Crl.O.P.No.4617 of 2003 has filed the Criminal Original Petition to direct the respondents, their men, agents and subordinates to restrain from interfering with the business of the petitioner as long as the business is conducted lawfully and without indulging in multi level marketing.

3. So fa r as the Crl.O.P.No.2347 of 2003 is concerned, the petitioner in the affidavit filed in support of the petition would submit that the petitioner company is registered in January, 20 01 under the Indian Companies Act and it is a sister concern of Goldquest International Limited based at Hong Kong; that Goldquest International is a numismatic company dealing with Gold products and has partnered with B.H.Mayer's Mint from Germany to produce mint proof premier Numismatic, uncirculated legal tender products; that Goldquest International was the largest distributor of Olympic commemorative sets of the Olympic games, which took place in Sydney in the year 2000; that it has 5,00,000 customers and has operating offices in eight countries; that it is one of the world's largest and most respected fine art and gold coin and jewellery distributors and retailer and works with reputable Government and privately owned mints; that as part of its operations in India, the petitioner has entered into agreements with a number of organizations like the Shri Kanchi Kamakoti Peetam, the Shivaji Prabhu Charities Trust etc; that the programme is based on Customer Referral System; that the programme offers the customer, who enrolls with the company on payme nt of a fixed sum, a gold coin of numismatic value; that if the customer refers new customers, the

company pays commission to the said customer; that the petitioner has sought the approval of the Reserve Bank of India and the Ministry of Commerce and Industries to import uncirculated coins; that many people are benefitted by the company's interactive customer referral programme; that the petitioner's activities are all strictly legal and transparent.

4. The petitioner would further submit that however, on an erroneous understanding of the scope of the Act, ten customers of the petitioner were illegally detained by the Madurai Crime Branch on 24.6.2002 on the basis of a complaint; that the complainant was not a customer who felt cheated by the programme of the petitioner; that a member of the public was asked by the police to lodge the complaint and therefore, the complaint was not a genuine one and the FIR was belatedly filed with charges under Sections 420 and 511 IPC; that later the complaint was disposed of by the Metropolitan Magistrate, Madurai as mistake of fact; that the respondent alleged that the business of the petitioner would fall under the purview of the Act and requested to produce all the records of the petitioner; that on 19.1.2003, the second respondent had taken into custody all 84 people, officials, employees and distributors of the company; that in the instant case, apart from getting a gold coin of numismatic value, the customer also gets money by way of commission for enrolling new customers and in such a situation, the investments made by the customers cannot be said to have been made for making quick or easy money; that on such averments, the petitioner has come forward to file the above Criminal Original petition seeking the relief extracted supra.

5. So far as the Crl.O.P.No.4617 of 2003 is concerned, the petitioner in the affidavit filed in support of the petition would submit that the petitioner is a company incorporated in India; that Conybio is in the business of importing health care products mostly from Malaysia; that the petitioner has introduced 30 products in Tamil Nadu; that the products are sold by the petitioner in India through multi level marketing; that the petitioner has registered several members as distributors and they are paid commission as an incentive for introducing customers who are interested in buying the product; that the petitioner offers career to several persons who are suffering due to unemployment, but the law enforcement agencies in Tamil Nadu have taken the view that selling products through multi level marketing violates the Prize Chits and Money Circulation Schemes (Banning) Act, 1978; that the scheme has been passed by Parliament; that the sale of products by multi level marketing cannot be construed as a money circulation scheme; that the petitioner apprehends that the respondents will harass the petitioner and its employees by constantly visiting the office of the petitioner; that the promoters of the petitioner are law abiding citizens; that therefore, until it is clarified by the Court, the petitioner will not indulge in multi level marketing of its products in the State of Tamil Nadu. On such averments, the petitioner has come forward to file the above Criminal Original Petition seeking the relief extracted supra.

6. In the reply affidavit filed by the the Deputy Commissioner of Police, Central Crime Branch, Egmore, Chennai in the name of ` counter affidavit' in Crl.O.P.No.2347 of 2003 he would submit that the

petitioner/companies distribute or sell their product only on the enrolment of their members and if they enroll more members, they get commission or incentives, which clearly comes within the definition of Section 2(c) of the Act, 1978; that the petitioners have falsely induced their members by claiming that they can earn quick and easy money to the tune of lakhs of rupees by further inducing to enroll more members and therefore, the character of the scheme is not based on the product selling, but based on enrollment of members; that there is no mala fide intention on the part of the respondent in taking appropriate action in accordance with law against the petitioners as it squarely falls within the meaning of Section 2(c) of the Act; that if the allegations in the FIR prima facie disclose a cognizable offence, the respondent is duty bound to take action; that the investigation prima facie discloses that the petitioners/promoters companies are involved in money circulation scheme which is banned under the Act and the prayer sought for by the petitioners is also vague and ambiguous and therefore the petitions deserve to be dismissed in limine.

7. Mrs.Nalini Chidambaram, learned senior counsel appearing on behalf of the petitioners would submit that the petitioner companies are registered ones under the Companies Act; that they are conducting the business as that of the Amway; that no action has been taken against Amway and they are openly doing multi level marketing, but the petitioners are being continuously harassed by the respondents and they do not come within the purview of the Act; that the Central Minister has also stated that the multi level marketing does not come within the purview of the Act; that the petitioners are doing the business in accordance with law and have not violated any law; that as and when the petitioner's products are sold, they are paying Commission and therefore would pray to pass an order that the petitioners are doing the same business as that of the Amway and hence, the affidavits filed by the petitioners may be treated as FIR and action may be taken against Amway.

8. The learned senior counsel would further submit that for the past five years, no one has made any complaint to the police; that without any reasonable cause and due to mala fide intention, the respondents are attempting to interfere with the petitioners' business; that no prima facie cases were made out against the petitioners; that it is seen from the materials placed by the learned Government Advocate and according to him, the initial investigation discloses a prima facie case of cheating, which is punishable under Section 3 of the Act.

9. The learned senior counsel would also submit that the petitioners are not doing a multi level marketing business and it is doing only money circulation scheme and they are giving certificate of gold content and therefore, there was no question of cheating; that the complaints against the petitioners were closed as mistake of fact and hence, she seeks direction

to the respondents, their men, agents and subordinates to restrain from interfering in the business of the petitioners as long as the business is conducted lawfully and without indulging in multi level marketing.

10. Per contra, Mr.Abudukumar Rajarathinam, learned

Government Advocate on the criminal side would submit that under Section 154 Cr.P. C., where a cognizable offence is made out, it is the duty of the police officer to register in writing the FIR; that the offences alleged against the petitioners are punishable under Section 420 IPC; that Section 10 of the Prize Chits and Money Circulation Schemes(Banning) Act, 1978, reads:

"All offences punishable under this Act shall be cognizable"

Once it is found that the offence committed is a cognizable offence, it is the duty of the Police Officer to take action against the petitioners in accordance with law. Section 2(c) of the Prize Chits and Money Circulation Schemes(Banning) Act, 1978, reads:

"Money Circulation Scheme" means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions.

In this case also, the scheme involves enrolment of the members and hence it comes under the Money Circulation Scheme.

11. As per Section 3 of the Act, "no person shall promote or conduct any prize chit or money circulation scheme, or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme." In these cases, the programme is based on customer referral system and the programme offers the customer, who enrols with the company, on payment of a fixed sum, a gold coin of numismatic value and if the customer refers new customers, the company pays commission to the said customer and in paragraph 21 of the affidavit, the petitioners admit the same.

12. The learned Government Advocate would further submit that a similarly placed company also filed writ petitions in W.P.Nos.2908 and 4144 of 2003 seeking almost the same prayer which was dismissed by this Court on 13.2.2003. In that case also, one who had become a member and one member who had bought a magnetic bed, falsely induced the complainant that if he purchased a magnetic bed for Rs.5,990/-, he would in turn become a member and if he in turn introduced two more members, he would make quick money to the tune of lakhs of rupees and thereby cheated the complainant and hence for the abovesaid reason, dismissed the writ petition.

13. The learned Government Advocate would also submit that investigation is at the crucial stage and if and when they receive the complaint against Amway, they would take action against them. As there was a total ban of the above money circulation scheme, the petitioner cannot be allowed to do the business and the same is punishable under the Act. In such circumstances, at the stage of investigation, interference by this Court is not warranted and would pray to dismiss the above criminal original petitions.

14. As far as investigation is concerned, the learned Government Advocate would undertake that he would impart proper instructions to the respondent to investigate the same and file a Final Report following all the procedures contemplated under law. The learned Government Advocate would also submit that based on the affidavit, if necessary, the respondent would issue notice to Amway and enquiries would be made. He would further submit that the prayer sought for is totally vague and this Court need not issue any direction to the Director General of Police restraining him from giving instructions to his lower officers and whenever, the complaint

discloses that a cognizable offence is made out, it is the duty of the police officer to register the complaint under Section 156 Cr.P.C., and take action against the petitioners in accordan ce with law.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel for the petitioner and the learned Government Advocate on the Criminal side, it comes to be known that both the petitioners in Crl.O.P.Nos.2347 and 4617 of 2003 have come forward to file the above petitions respectively praying to direct the respondents 2 and 3 to withdraw their instructions issued to the law enforcing agencies and the police in the State to initiate action under the Act and/or under Section 42 0 IPC and further to direct the respondents, their men, agents and subordinates to restrain from interfering with the business of the petitioner as long as the business is conducted lawfully and without indulging in multi level marketing.

16. For the sake of convenience and for easy reference, Crl.O.P.No.2347 of 2003 and 4617 of 2003 are hereinafter referred to as the first and second petitions and the petitioners therein as the first and second petitioners respectively.

17. The petitioners are different entities, the first petitioner being the Gold Quest International Private Limited and the second petitioner being Conybio Healthcare (India) Private Limited, both based at Chennai and the respondents are the State of Tamil Nadu and the Directors General of Police, Crime Branch and Economic Offences Wing and the Inspector General of Police, Economic Offences Wing. So far as the first petition above is concerned, the petitioner's contentions are that it is a registered company under the Indian Companies Act and is a numismatic company dealing with gold products and are considered the largest distributor of Olympic commemorative sets of the Sydney Olympics and has 5 lakh customers and its sphere of activity spreads to eight countries including India and a reputed concern having entered into agreements with a number of reputed organisations.

18. The first petitioner would describe the operational sphere of the first petitioner company that if the customer refers new customers, the company pays commission; that many are benefited by its interactive customer referral programme and its activities are strictly legal and transparent, but on an erroneous understanding, based on a complaint, not by a customer but someone else, the FIR has been belatedly filed under Sections 420 and 511 IPC which was later referred as ` mistake of fact'; that

the respondent has wrongly concluded that the business activities of the petitioner would fall under the purview of the Act; that the second respondent, on 19.1.2003 took into custody 84 people of officials, employees and distributors of the company; that apart from a gold coin of numismatic value, the customer also gets money by way of commission by enrolling new customers and in such a situation, the investments made by the customers cannot be said to be for making quick money or easy money.

19. Likewise, in the second petition above also, the petitioner would submit that Conybio is in the business of importing healthcare products mainly from Malaysia and it has introduced 30 products in Tamil Nadu and the same is sold by the petitioner in India through multi level marketing appointing distributors on the basis of commission, thus offering career to several persons, but the enforcement agencies in Tamil Nadu have taken a view that selling products through multi level marketing violates the provisions of the Act; that they are threatening the petitioner and its employees and therefore it has become incumbent on the part of the Court to clarify that the petitioner will not indulge in multi level marketing of its products in the state of Tamil Nadu and would seek for the reliefs extracted supra.

20. During arguments, the learned senior counsel besides bringing out the facts and circumstances as extracted herebefore would also cite a judgment of the Honourable Supreme Court in support of the case of the petitioners reported in (1982) 1 SCC 561 = AIR 1982 SC 949 (STATE OF WEST BENGAL AND OTHERS vs. SWAPAN KUMAR GUHA AND OTHERS) wherein the Honourable Apex Court, while considering the scope of the money circulation scheme, has held:

"The definition of the expression `money circulation scheme' contained in Section 2(c) of the Act does not comprehend within its scope any and every activity "for the making of quick or easy money". Two conditions must be satisfied before a person can be held guilty of an offence under Section 4 read with Sections 3 and 2(c) of the Act. In the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrolment of members into that scheme. In other words, there has to be a community of interest in the happening of such event or contingency."

".... To be a money circulation scheme, a scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrolment of the members into the scheme. The scheme has necessarily to be judged as a whole, both from the viewpoint of the promoters and also of the members."

".... The position will not be any different, judged from the point of view of the depositors, even if a part of the transaction is not above-board and is secretive or clandestine in nature. Such transaction cannot be considered to be a scheme for making of quick or easy money, though it may offend revenue

laws or any other law. Transactions in black money do not come within the mischief of the Act...."

".... Two conditions must be satisfied before a person can be held guilty of an offence under S.4 read with Ss.3 and 2(c) of the Act. In the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrolment of members into the scheme."

21. The learned senior counsel for the petitioners would also cite an unreported order of the Bombay High Court dated 10.7.2002 made in Criminal Writ Petition No.800 of 2002 wherein on account of the failure of the respondents to pay a sum of Rs.2,500/= in the business transaction, a criminal case has been filed by the individual making out a case under Sections 406,420 r/w.34 IPC and under Sections 3, 4 and 5 of the Act and assessing the facts and circumstances of the case and the manner in which the business was conducted in that case, the learned single Judge of the Bombay High Court has arrived at the conclusion to hold that `the terms and conditions printed on the receipts are binding upon the complainant and thus non-repayment of the amount by the company would not amount to commission of offence by any one of the respondents. At the most, it may be said that there is breach of contract for which the remedy of the petitioner is to go to the civil court.... The case would also not be covered under the provisions of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 as there is no element of circulation of money for quick or easy money or easy gains to the parties by the said transactions. There is no wagering or a transaction which is without exchange of consideration. The method adopted by the company was only a method adopted for sales promotion as a business strategy for larger sales. Therefore, in my opinion, the transaction between the complainant and respondents would not be covered by the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. In my opinion, merely because the respondents failed to repay the amount of Rs.2500/=, it does not mean that the respondents had intention from the beginning to cheat complainant or to misappropriate his money.'

22. In the first criminal original petition, the petitioner would seek for a direction to be issued to the respondents 2 and 3 to withdraw all instructions issued by them to various law enforcing agencies and the police of various districts in the State to initiate action against the petitioner for cheating and under the provisions of the Prize Chits and Money Circulation Schemes (Banning) Act and the second criminal original petition to direct the respondents from interfering with the business of the petitioner so long as the business is conducted lawfully and without indulging in multi level marketing.

23. So far as the prayer in the second petition is concerned, the petitioner would submit that since the prayer itself is specific to the effect that so long as the business is conducted lawfully, the respondents need not have to interfere with and therefore praying to direct the respondents, their men, agents and subordinates to refrain from interfering. But the case of the respondents so far as the prayers of both the petitions

are concerned, it is not the question of causing interference while the petitioners do the business unlawfully but the very business that the petitioners have introduced and are running and the method and means of running the business itself is illegal and therefore the classification of lawful business or unlawful business itself has no place.

24. On the part of the petitioners, the typed set of papers submitted would only contain publicity or advertisements captioned ` creating earning opportunities' or `dreams, vision, business, success' and in the name of `starting your own business' as `Free India Concepts Opportunity' terms of high hopes and aspirations such as `no investment, only you have to purchase any one product, no experience required, everyone can do it, no infrastructure required to promote, no risks, work at your own convenience part time and full time venture, sky is the limit, no overheads and inherit y our business' and further `it has unimaginable income prospects that helps you to earn millions', ` all the effort you need to put in is introducing this concept to your friends,neighbours and relatives' and the salient features of their concepts with alluring terms such as `we introduce an innovative concept where you have to purchase a product and recommend the products to your friends and relatives', `set your own income target. There are no fixed targets for you to achieve. You have to set your own goals and targets of your income. Your income depends on number of new people sponsored into your network', `the unique income plan designed by the company ensures unlimited income growth with minimum efforts', `the unique business plan designed generates immediate income with which all necessities of your life can be fulfilled', `the unique business plan ensures life long income to all its network distributors' and that `this business can be inherited to your spouse, children, dependants and relatives' ultimately recommending to purchase anyone product of your choice and setting guidelines for the agents/distributors and offering sales promotion incentives. Thus page by page one could see only alluring promises of making not only quick but easy money but also having the hallmark of canvassing other buyers.

25. Nothing is placed on record regarding the foundation of the petitioner companies and the aims and objectives of the companies to achieve and how they are beneficial or serving the ends of the society or the general public and therefore needless to mention that only to cover up cases of such nature, Act 43/78 has been legislated by the framers of law revealing thereby the legislative intent to cover up cases of such nature with schemes which are not based on any ideal relying on one's effort, hard work or putting in the intelligence etc. but on luck or chance of making quick or easy money by lazy or lethargic means of enrolling members into the scheme only to enrich the organisers at the cost of the general public which are glaring in the schemes and there is no wonder the respondents have issued proper directions to their subordinates to be on the alert and to avoid innocent general public from falling a prey to the ill-motivated designs or alluring tricks and tactics adopted by parties like the petitioners by using those who fall a prey early being used as their canvassing agents for enlisting more number of the general public to join the scheme ultimately to enrich themselves at the cost of the innocent public who are sure to be cheated ultimately and since many such instances have proved to be utter failures in the recent times giving way

for the public to be cheated of their hard-earned life saving monies. Prevention is better than cure. The preventive and punitive measures taken on the part of the respondents cannot, under any circumstance, be termed as either irregular or illegal or infirm or in violation of the norms of law. The respondents have rightly exercised their jurisdiction conferred by law in registering such cases wherein such unlawful activities are reported or brought to the notice of the respondents thereby promptly registering the case either under the relevant provisions of the IPC such as 420 or under the penal provisions of the Special Act such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and thus they have only acted in adherence to the requirements of law and no such directions or orders as sought for to be made in the above petitions need be necessary in the circumstances of the case.

26. So far as the judgments cited on the part of the petitioners are concerned, in the first judgment by the Honourable Apex Court it is clearly held that `in the first place, it must be proved that he is promoting or conducting a scheme for the making of quick or easy money and secondly, the chance or opportunity of making quick or easy money must be shown to depend upon an event or contingency relative or applicable to the enrolment of members into that scheme', which are the ingredients of the relevant provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, which are laid emphasis by the Honourable Apex Court and the Honourable Apex Court would also hold that the `scheme has necessarily to be judged as a whole both from the viewpoint of the promoters and also of the members in order to find out whether it is a scheme for the making of quick or easy money and any event or contingency relative or applicable to the enrolment of members into the scheme'. Therefore, it is incumbent on the part of the respondents to study each and every such scheme floated and exercise their jurisdiction and proceed against, provided the transaction is not above-board and is secretive or clandestine in nature and if the transaction is considered to be a scheme for making quick or easy money.

27. So far as the case in hand is concerned, on a overall consideration of the facts and circumstances of the scheme floated on the part of the petitioners, the respondents in their considered view have rightly arrived at the conclusion to hold that they fall under the purview of Section 420 IPC and under Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and hence they have given positive instructions to the law enforcing machinery and the police to register the cases wherever such schemes are floated. Therefore, the actions and prosecutions initiated by the respondents and their subordinates could only be concluded as within the permissible limits of their powers to register such cases and not in violation of any law or rule or norms.

28. From the unreported judgment of the Bombay High Court, it could only be seen that it is entirely on a different set of facts as extracted supra and in the facts and circumstances revealed therein, the learned single Judge of the Bombay High Court has justified the action of the Magistrate in dismissing a complaint filed by the complainant therein and the case in hand having different set of facts, the norms or principles evolved therein cannot be applied to the case in hand. Moreover, since the element of

canvassing new members has not at all been subjected to wide discussion nor any conclusion arrived at in the said case, this Court finds it difficult to adopt the proposition laid down therein.

29. Moreover, the cases having been registered, they are at the investigative stage and therefore this Court is of the firm view that a thorough investigation by the respective law enforcing agencies and the police will be the answer and in the interest of the general public, on a overall consideration of the facts and circumstances of the case put forth and in application of the legal principles and the law as well, the only conclusion that could be arrived at by this Court is to decline to cause interference into the rights of the respondents in initiating such measures against the petitioners not only registering cases under Section 420 IPC but also under the relevant provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 19 78 and hence the following order:

In result, both the above criminal original petitions fail and they are dismissed.

Consequently, Crl.M.P.Nos.840, 841 and 1603 of 2003 are also dismissed.

Index: Yes
Internet: Yes
raa/Rao

To

1.The Secretary to
Government, Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.

2.The Director General of Police,
Crime Branch, Egmore,
Chennai.

3.The Director General of Police,
Economic Offences Wing,
Chennai.

4.The Public Prosecutor,
High Court, Madras.

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